
(1997) 06 PAT CK 0006

In the Patna High Court

Case No : Civil Revision No. 1343 of 1994

Smt. Shakunti Devi and Others

APPELLANT

Vs

Sri. Nawal Kishore Sharma and Others

RESPONDENT

Date of Decision : 29-06-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1998) 1 BLJR 294 : (1997) 2 PLJR 305

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The civil revision application was originally filed by defendant-appellant, Smt. Shakunti Devi. During the pendency of this civil revision application a petition was filed for adding one Brajesh Kumar and another Vikash Kumar as petitioners in the revision application on the ground that they are transferees from the original petitioner of this revision application. The petition was allowed by this Court on 19th of September, 1996 and they have also been impleaded as petitioners and were heard.

2. The order dated 5th of July, 1994 passed by the learned 5th Additional District Judge in Misc. Appeal No. 30 of 1992 is under challenge in this case. By the impugned appellate order and judgment the appellate Court dismissed the appeal and confirmed the order dated 18th of May, 1992 passed in Misc. Case No. 1/89 and held that the ex-parte judgment and decree passed in Title Suit No. 165/86 is legal and justified.

3. The plaintiff-opposite party 1st set filed the Title Suit No. 165/86 for specific performance of contract on the basis of a Mahadanama dated 21st of August, 1985. It was alleged that the defendant-petitioner No. 1 agreed to sell the suit property in favour of the plaintiff-opposite 1st party for a consideration of Rs. 48,000/-, out of which Rs. 5,000/- was paid as advance. It was further alleged

that in spite of request the defendant-petitioner No. 1 had not executed the sale-deed, though the plaintiffs were inclined to pay rest amount. The suit was decreed ex parte on 5th of September, 1988 followed by decree signed on 26th of November, 1988.

4. The defendant-petitioner No. 1 filed an application on 4th of January, 1989 under Order IX, Rule 13 and Section 151 of the CPC for setting aside the ex parte decree. It was registered as Misc. Case No 1/89 and after contest the Court of Sub-judge, Begusarai dismissed the said Misc. Case No. 1/89. Thereafter when the defendant-petitioner preferred appeal being Misc. Appeal No. 30/92 the same has been dismissed by the impugned judgment dated 5th of July, 1994.

5. The Counsel for the petitioners placed reliance on order-sheet of Title Suit No. 165/86 (Annexure-2). According to him, notices were not duly served on the defendant-petitioner. According to him in terms with Order V, Rule 17 of the CPC if the defendant was found to have refused to accept the service of notice or was not found at the residence within a reasonable time, then in that case, the trial Court should have examined the serving officer in terms with Rule 19 under Order V of the CPC. It was contended that the trial Court did not follow the aforesaid procedure and without examination of serving officer accepted the notice to be duly served on the defendant-petitioner solely on the ground that the defendant refused to accept the notice.

The Counsel for the petitioners further relied on Rule 20 under Order V of the CPC and submitted that if the Court was satisfied and had reason to believe that this defendant was keeping out of way for the purpose of avoiding service, then the summons should have been served by way of substituted service and/or by advertisement through a daily newspaper of the locality, in which the defendant was actually residing. According to him the procedure under Rule 20 under Order V of the CPC was also not followed by the trial Court before passing the ex-parte decree.

6. The Counsel for the petitioners also submitted that Rule 6 under Order IX of CPC was also not followed in the present case, as the plaintiffs had appeared but the defendant had not appeared at the time of hearing of the suit. The Counsel placed reliance on a decision of this Court in the case of Bhagwan Singh and Ors. v. Ram Balak Singh and Anr. reported in 1987 PLJR 427 and in the case of Kishori Prasad v. Punjab National Bank and Ors. reported in 1996 (2) BLJ 359.

7. It was further submitted by the Counsel for the petitioners that in absence of written statement, which was not filed, the trial Court should have fixed the date of hearing for hearing the matter ex-parte and stated that the aforesaid procedure was also not followed by the trial Court. Reliance was placed on the judgment of this Court in the case of Mahabir Prasad v. Abhay Chandra Gupta and Oer. reported in 1987 PLJR 284 : 1987 BLJ 19 and in the case of Govind Ram Agarwalia v. Harsukh Rai Doshi and Ors. 1969 PLJR 65.

8. Mr. S.C. Ghosh, Senior Advocate appearing oil behalf of the plaintiff opposite

parties rightly pointed out that this civil revision application has not been preferred by the defendant appellant-petitioner against the ex-parte decree passed in Title Suit No. 165/86. In the present case the order and judgment dated 5th of July, 1994 passed in Misc. Appeal No. 30/92 is under challenge. It will be evident from the judgment of appellate Court and the order of the learned Sub-Judge, Begusarai that all possible steps were taken to summon the defendant-petitioner in the said suit. The notice was duly served on the defendant-petitioner. The defendant-petitioner on receiving such notice refused to give receipt. The peon who served the notice sworn affidavit which was taken into note by the Court below to the effect that his service report was correct. Both the Courts below also took into note that summons were also issued to the defendant-petitioner through registered post, which was refused by the defendant petitioner. Therefore notice was also published in the local daily newspaper, but the defendant-petitioner did not choose to appear in the suit. Details of evidences and statement of witnesses have been recorded by both the Courts below, including the statement of Lawyer's Clerk and other persons, After such discussion of evidences (Exhibits), statement of witnesses, both the Courts below have come to a definite finding that the notices/summons were duly served on the defendant-petitioner and the defendant-petitioner had knowledge relating to the suit but she avoided to appear in the said suit, which resulted in parts decree. There being concurrent finding of facts by both the Courts below, there is no occasion for this Court to differ with the same under its revisional jurisdiction.

9. Notices having been duly received by the defendant-petitioner but having refused to give receipt they cannot derive any benefit of the decision given by this Court as referred above.

10. I find no illegality in the impugned judgment. The civil revision application is accordingly, dismissed.

11. On the facts and circumstances of the case, there will be no order as to costs.